IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO.90 OF 2007
IN
SUMMARY SUIT NO.3395 OF 2006

Rajendra Nemichand Kothari ..Plaintiff.
Vs.
Rahul Jagdish Gupta ..Defendant.

....

Mr. K.K. Tated for the Plaintiff.
Mr. Asif Meman i/b S.R. Saudagar for the Defendant.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

9th April, 2007.

P.C. :

1. The Plaintiff has instituted a suit under Order 37 of the Code of Civil Procedure 1908 claiming that a loan of Rs.15 lacs was provided to the Defendant and for the repayment of which 13 cheques in the total amount of Rs.15 lacs dated 12th November, 2003 were issued by the Defendant to the Plaintiff. The cheques were deposited with the Union Bank of India and were dishonoured by the bankers of the Defendant on the ground that the account was closed. The

Plaintiff instituted a complaint (Criminal Complaint 434 of 2004) under Section 138 of the Negotiable Instruments Act, 1881. Thereafter on 31st May, 2005 the Defendant issued two cheques totaling an amount of Rs.2 lacs drawn on the Sangli Bank Limited. Accordingly the suit has been instituted for the recovery of the balance of Rs.13 lacs.

2. The defence in paragraph 9 of the reply is that the Defendant was producing a film and the Plaintiff had agreed to give a loan on interest. According to the Defendant, as per the practice of the film industry, the Plaintiff obtained blank cheques assuring the Defendant that he would arrange finance either by himself or through his family or other sources. Accordingly, it has been stated that the cheques were handed over to the Plaintiff though no consideration was received. Section 20 of the Negotiable Instruments Act provides that when one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder

thereof to make or complete a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The contention of the Defendant that there was no consideration for the transaction is prima facie belied by the conduct of the Defendant, in repaying an amount of Rs.2 lacs on 31st May, 2005. Significantly this is after the institution of the criminal complaint in the year 2004. In so far as the payment of Rs. 2 lacs by the Defendant to the Plaintiff is concerned, the defence is that the Plaintiff had approached the Defendant through one Mr. Kuku Babbar and requested for a loan of Rs.2 lacs which was advanced. Prima facie, it is wholly improbable that the Plaintiff would have approached the Defendant for a loan of Rs.2 lacs and that the Defendant would agree to do so after the criminal complaint was instituted in the year 2004. The defence is therefore clearly an after thought.

3. However, having regard to the interests of justice, I am of the view that it would be appropriate to grant to the Defendant leave to defend the suit conditional on the deposit of an amount of Rs.13

lacs within a period of eight weeks from today. On deposit, the amount shall be invested by the Prothonotary and Senior Master in a Fixed Deposit of a nationalized bank and shall be renewed thereafter periodically during the pendency of the suit. Upon deposit, the Defendant would be at liberty to file his written statement within a period of eight weeks. The Summons for Judgment is accordingly disposed of.